

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION

IN RE: )  
 )  
EASTERN LIVESTOCK CO., LLC, ) Case No. 10-93904-BHL-11  
 )  
Debtor. ) Hon. Basil H. Lorch III

**MOTION TO APPROVE COMPROMISE AND SETTLEMENT  
WITH NORTHERN LIVESTOCK VIDEO AUCTION**

Pursuant to Federal Rule of Bankruptcy Procedure 9019, James A. Knauer, as chapter 11 trustee (the "Trustee") for the debtor, Eastern Livestock Co., LLC (the "Debtor"), by counsel, hereby files this motion (the "Settlement Motion") requesting the Court's approval of a compromise and settlement of claims between the Trustee and Vermilion Ranch Corporation d/b/a Northern Livestock Video Auction ("NLVA"). In support of this Settlement Motion, the Trustee states as follows:

**Introduction and Background**

1. Certain petitioning creditors commenced the above-captioned chapter 11 case (the "Chapter 11 Case") against the Debtor on December 6, 2010 by filing an involuntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") with the United States Bankruptcy Court for the Southern District of Indiana, New Albany Division (the "Court"). The Court entered the *Order For Relief in An Involuntary Case and Order to Complete Filing* [Dock. No. 110] on December 28, 2010.

2. On December 27, 2010, the Court entered the *Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee* [Dock. No. 102] approving the *United States Trustee's Application for an Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee* [Dock. No. 98] pursuant to 11 U.S.C. § 1104.

3. The Trustee filed the *Trustee's Chapter 11 Plan of Liquidation* on July 23, 2012 [Docket No. 1255] and the Trustee's *First Amended Chapter 11 Plan of Liquidation* on October 26, 2012 [Dock. No. 1490] (as it may be subsequently amended or modified, the "Plan"). The Court entered an Order on December 17, 2012 [Dock. No. 1644] (the "Confirmation Order") confirming the Plan. Pursuant to the Plan and the Confirmation Order, general unsecured creditors of Debtor's estate may choose to "opt in" and receive a distribution from the "Fifth Third Claim Settlement Fund" (as that term is defined in the Plan). Choosing to "opt-in" affects such creditor's rights to and amount of distributions under the Plan, waives certain of the creditor's claims against non-Debtor entities and has other and further effects that are more particularly described in the Plan and the Confirmation Order.

4. Prior to the filing of the Chapter 11 Case, Debtor contracted to purchase cattle from or through NLVA. Debtor made partial payments to NLVA (the "Down Money") to be applied towards the purchase price of certain cattle at time of delivery. As of December 6, 2010, some of the cattle had already been delivered, some of Debtor's checks payable to NLVA were returned to NLVA unpaid, some of the cattle had been delivered to Debtor's customers, and some of the cattle had been delivered to others.

5. Proceeds of certain of the cattle (the "Interpled Funds") were interpled with the Court and are involved in Adversary Proceeding No. 11-59093 (the "Adversary"). Proceeds of certain of the cattle (the "Lot 975 Proceeds") were collected by the Trustee after the filing of the Chapter 11 Case.

6. On May 2, 2011, NLVA filed a proof of claim (the "NLVA POC") in the Chapter 11 Case. The NLVA POC is designated on the official claims register maintained by The BMC Group, Inc. as claim no. 456. The NLVA POC asserts a total claim against Debtor in

the amount of \$1,252,040.49, comprised of an alleged secured claim in the amount of \$594,467.27 and an alleged unsecured claim in the amount of \$657,573.22.

7. The Trustee contends that claims now exist on behalf of the estate to recover from NLVA certain transfers of cattle proceeds. NLVA disputes the Trustee's allegations and insists that it is entitled to retain all Down Money, the Interpled Funds, the Lot 975 Proceeds, and all other proceeds of the cattle at issue.

### **The Settlement**

8. The Trustee requests that the Court approve the Settlement Agreement and Mutual Release attached hereto as Exhibit A (the "Settlement Agreement"). Pursuant to the Settlement Agreement, NLVA agrees to (i) release any and all rights, claims, or interests in or to certain cattle identified as the "Schedule 1 Cattle" and "Schedule 2 Cattle", the Lot 975 Proceeds and any and all proceeds of the "Schedule 1 Cattle" and "Schedule 2 Cattle", (ii) amend the NLVA POC to assert only an unsecured claim in the amount of \$564,965.60, and (iii) file a disclaimer of interest and motion to dismiss in the Adversary. In exchange, the Trustee, pursuant to the Settlement Agreement, agrees to release any and all claims to the Down Money, certain cattle identified as the "Schedule 3 Cattle" and the "Schedule 4 Cattle", and any and all proceeds of the "Schedule 3 Cattle" and "Schedule 4 Cattle" (excepting only the Lot 975 Proceeds in excess of the Down Money related thereto). The Trustee further requests that the Court modify the automatic stay of 11 U.S.C. § 362 to the extent necessary to allow NLVA to set off the Down Money and collect all proceeds of the "Schedule 3 Cattle" and "Schedule 4 Cattle".

**Basis for Relief**

9. Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), this Court has authority to approve a compromise or settlement on motion made by the Trustee after notice and opportunity for a hearing.

10. Under Bankruptcy Rule 9019, a bankruptcy court should approve a proposed compromise if it is fair and equitable and in the best interests of the estate. See In re Doctors Hosp. of Hyde Park, Inc., 474 F.3d 421, 426 (7th Cir. 2007); Depoister v. Mary M. Holloway Found., 36 F.3d 582, 586 (7th Cir. 1994); Matter of Energy Co-op, Inc. 886 F.2d 921, 927 (7th Cir. 1989).

11. The Trustee believes that the compromise and settlement reflected in the proposed Settlement Agreement is fair and equitable and in the best interests of the estate. The alternative to the settlement is litigation of the claims between the Trustee and NLVA which would result in expenses and delay and create the possibility of an outcome that would result in a smaller recovery to the estate. The Trustee will be able to immediately collect outstanding receivables that NLVA had asserted claims to, resolve an asserted secured claim and substantially decrease an unsecured claim.

12. The Trustee requests the Court to specify in any order granting this Settlement Motion that the automatic stay of 11 U.S.C. § 362 is modified to the extent necessary to allow NLVA to (i) setoff the Down Money and (ii) collect proceeds of Schedule 3 Cattle and Schedule 4 Cattle.

13. If no objections to this Settlement Motion are filed, the Parties request that the Court enter an order approving the Settlement Agreement. If any objections to this Settlement Motion are filed, the Parties request that this Settlement Motion and any timely filed

objection be scheduled for hearing by the Court on the earliest date that is available and convenient to the Court.

WHEREFORE, the Trustee respectfully requests that the Court enter an order approving the Settlement Agreement attached hereto as Exhibit A and grant the Trustee all other just and proper relief.

Respectfully submitted,

FAEGRE BAKER DANIELS LLP

By: /s/ Dustin R. DeNeal

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 5, 2013, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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